

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

DEBBIE L. DOUTHIT,)	
)	
Plaintiff,)	
)	
vs.)	CIV-08-336-FHS
)	
(1) CARTER COUNTY BOARD OF COMMISSIONERS,)	
STATE OF OKLAHOMA,)	
(2) KAREN VOLINO, CARTER COUNTY COURT)	
CLERK, in her official and individual)	
capacity,)	
)	
Defendants.)	

ORDER

Before the court for its consideration is the Defendant's Motion to Dismiss, or in the Alternative, Motion for Extension of Time and Brief in Support (Doc. 37). The court rules as follows on the motion.

In the Motion to Dismiss Defendants state they have properly served the Plaintiff with Interrogatories and Requests for Production of Documents and Plaintiff has failed to respond. They cite numerous attempts to contact Plaintiff, but to no avail.

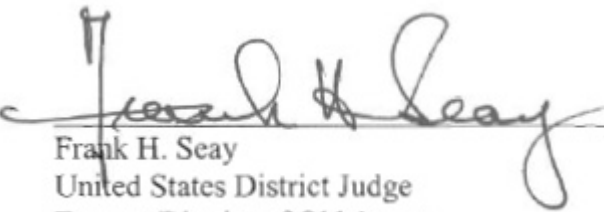
The court finds the facts as follows. On September 11, 2008, Plaintiff filed her Complaint in this court. On February 17, 2009, Defendant Volino filed her Answer to Plaintiff's Complaint. On May 1, 2009, Defendant Board filed its Answer to Plaintiff's Complaint. On June 2, 2009, a Scheduling Order was entered by this court. On or about August 6, 2009, Defendants sent their Interrogatories and Request for Production of

Documents to Plaintiff's then counsel of record Loren Gibson. These discovery request were served upon Plaintiff's then counsel via certified mail on August 7, 2009. On August 11, 2009, former counsel for Plaintiff, Loren Gibson filed a Motion to Withdraw as Counsel for Plaintiff. In that motion Plaintiff's counsel stated that he had not had contact with the Plaintiff since December 2008. On or about September 2, 2009, the court entered an order granting said request. On or about September 4, 2009, Plaintiff's former counsel Loren Gibson notified defense counsel that he had sent Defendant's discovery request to his client. Plaintiff has not responded to the Request. Defense counsel has attempted to communicate with the pro-se Plaintiff on several occasions by writing to her at her last known address, 2021 NW 4th St., #51, Ardmore, Oklahoma 73401. Defendant's letters have been returned. To date, no new attorney has entered an appearance for Plaintiff. The court has also sent various correspondence to Plaintiff at the above address, all of which have been returned to the court as noted in the court record. The returned mail is marked "Moved left no forwarding address."

Plaintiff has a responsibility to prosecute her case. She has failed to do this. Dismissal pursuant to F.R.C.P. 41 (b) is appropriate when Plaintiff fails to prosecute her case. AdvantEdge Business Group v. Thomas E. Mestmaker & Associates, Inc., 552 F.3d 1233, 1236 (10th Cir. 2009) (holding district court undoubtedly has discretion to dismiss Plaintiff's case for failure to prosecute) and U.S. ex rel. Jimenez v. Health Net, Inc., 400 F.3d 853, 854-856 (10th Cir. 2005). (Holding dismissal appropriate or proper against a party who discards court order and fails to proceed as required by court rules.) Accordingly, the court dismisses this case without prejudice to re-filing, for Plaintiff's failure to prosecute. However, the court denies the

Defendant's request for attorney fees.

IT IS SO ORDERED this 3rd day of November, 2009.



Frank H. Seay
United States District Judge
Eastern District of Oklahoma